

1        ~~Rule 69. Execution and proceedings supplemental thereto.~~

2        ~~(a) Availability of writ of execution. A writ of execution is available to a judgment creditor~~  
3 ~~to satisfy a judgment or other order requiring the delivery of property or the payment of money~~  
4 ~~by a judgment debtor.~~

5        ~~(b) Property subject to execution. A writ of execution may be used to levy upon all of the~~  
6 ~~judgment debtor's personal property and real property which is not exempt from execution under~~  
7 ~~state or federal law.~~

8        ~~(c) Issuance of writ of execution. Unless otherwise ordered by the court, a writ of execution~~  
9 ~~may be issued at any time within eight years following the entry of a judgment or order (except~~  
10 ~~an execution may be stayed pursuant to Rule 62), either in the county in which such judgment~~  
11 ~~was rendered, or in any county in which a transcript thereof has been filed and docketed in the~~  
12 ~~office of the clerk of the district court. Notwithstanding the death of a party after judgment,~~  
13 ~~execution thereon may be issued, or such judgment may be enforced, as follows:~~

14        ~~(1) In case of the death of the judgment creditor, upon the application of an authorized~~  
15 ~~executor or administrator, or successor in interest.~~

16        ~~(2) In case of the death of the judgment debtor, if the judgment is for the recovery of real or~~  
17 ~~personal property or the enforcement of a lien thereon.~~

18        ~~(d) Contents of writ and to whom it may be directed. The writ of execution shall be issued in~~  
19 ~~the name of the State of Utah, and subscribed by the clerk of the court. It shall be issued to the~~  
20 ~~sheriff or constable of any county in the state (and may be issued at the same time to different~~  
21 ~~counties) but where it requires the delivery of possession or sale of real property, it shall be~~  
22 ~~issued to the sheriff of the county where the real property or some part thereof is situated. If it~~  
23 ~~requires delivery of possession or sale of personal property, it may be issued to a constable. It~~  
24 ~~must intelligibly refer to the judgment, stating the court, the docket number, the county where the~~  
25 ~~same is entered or docketed, the names of the parties, the judgment, and, if it is for the payment~~  
26 ~~of money, the amount thereof, and the amount actually due thereon. The writ may be~~  
27 ~~accompanied by a praecipe executed by the judgment creditor or the judgment creditor's counsel~~  
28 ~~generally or specifically describing the real or personal property to be levied upon. It shall be~~  
29 ~~directed to the sheriff of the county in which it is to be executed in cases involving real property,~~  
30 ~~and shall require the officer to proceed in accordance with the terms of the writ; provided that if~~  
31 ~~such writ is against the property of the judgment debtor generally it may direct the sheriff or~~

constable to satisfy the judgment, with interest, out of the non-exempt personal property of the debtor, and if sufficient non-exempt personal property cannot be found, then the sheriff shall satisfy the judgment, with interest, out of the judgment debtor's non-exempt real property.

(e) When writ to be returned. The writ of execution shall be served at any time within sixty days after its receipt by the officer. It shall then be returned to the court from which it issued, and when it is returned the clerk must attach it to the record.

(f) Service of the writ. Unless the execution otherwise directs, the officer must execute the writ against the non-exempt property of the judgment debtor by levying on a sufficient amount of property, if there is sufficient property; collecting or selling the choses in action and selling the other property in the manner set forth herein. Levy includes the seizure of the property and holding the property in person or through one or more agents, including the judgment debtor, appointed by the officer. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within view of the officer, the officer must levy only on such part of the property as the judgment debtor may indicate, if the property indicated is amply sufficient to satisfy the judgment and costs.

When an officer has served an execution issued out of any court the officer may complete the return thereof after such date of service.

(g) Notice to judgment debtor of sale and of exempt property and right to a hearing. At the time the writ of execution is issued, the clerk shall attach to the writ a notice of execution and exemptions and right to a hearing and two copies of an application by which the judgment debtor may request a hearing.

Upon service of the writ, the sheriff or constable shall serve upon the judgment debtor, in the same manner as service of a summons in a civil action, or cause to be transmitted by both regular and certified mail, returned receipt requested, to the judgment debtor's last known address as provided by the judgment creditor, (i) the notice of execution and exemptions and right to a hearing, and (ii) the application by which the judgment debtor may request a hearing. Upon service of the writ, the sheriff or constable may also set the date of sale or delivery and serve upon the judgment debtor notice of the date and time of sale or delivery in the same manner as service of the notice of execution and exemptions and right to a hearing.

The notice of execution and exemptions that is to be served upon the judgment debtor shall indicate in substance that certain property is or may be exempt from execution including but not

limited to a homestead; tools of the trade; a motor vehicle used for the judgment debtor's business or profession; social security benefits; supplemental security income benefits; veterans' benefits; unemployment benefits; workers' compensation benefits; public assistance (welfare); alimony; child support; certain pensions; part or all of wages or other earnings from personal services; certain furnishings and appliances; musical instruments; and heirlooms (each not to exceed the amount allowed by law). The notice shall also indicate that the list is a partial list and other various property exemptions may be available under federal law or the Utah exemptions statute, and that the judgment debtor must request a hearing within ten (10) days from the date of service of the notice upon the judgment debtor. For purposes of this provision, the date of service shall be the date of mailing, if mailed, or date of delivery, if hand delivered, and no period for mailing under Rule 6(e) shall be used in computing the time period.

If the writ, the notice of execution and exemptions and right to a hearing cannot be served upon the judgment debtor in the same manner as service of a summons in a civil action, and the judgment creditor does not have available the judgment debtor's last known address, only the following notice need be published under the caption of the case in a newspaper of general circulation in each county in which the property levied upon, or some part thereof, is situated:

TO \_\_\_\_\_, Judgment Debtor:

A writ of execution has been issued in the above-captioned case, directed to the sheriff or constable of \_\_\_\_\_ County, commanding the sheriff or constable as follows:

"WHEREAS, \_\_\_\_\_ [Quoting body of writ of execution]."

YOU MAY HAVE A RIGHT TO EXEMPT PROPERTY from the sale under statutes of the United States or this state, including Utah Code Annotated, Title 78, Chapter 23, in the manner described in those statutes.

The date of publication shall be deemed the date of service and the date of publication shall be not less than ten (10) days prior to the date of sale or delivery.

This paragraph (g) shall not be applicable to judicial mortgage foreclosure proceedings commenced under Utah Code Annotated, Title 78, Chapter 37.

(h) Request for hearing.

(1) Time for request. The judgment debtor or any other person who owns or claims an interest in the property subject to execution may request a hearing to claim any exemption to the execution, or to challenge the issuance of the writ. Such request must be filed or served upon the

94 judgment creditor or the attorney for the judgment creditor within ten (10) days of the service  
95 upon the judgment debtor of the materials required to be served by paragraph (g) upon the  
96 judgment debtor. The request for a hearing, which shall be provided to the judgment debtor shall  
97 be in a form to enable the judgment debtor to specify the grounds upon which the judgment  
98 debtor challenges the issuance of the writ or claims the property executed upon to be exempt, in  
99 whole or in part.

100 (2) If a request for hearing is filed. If a request for hearing is filed by or on behalf of the  
101 judgment debtor, the court shall set the matter for hearing within ten (10) days from the filing of  
102 the request and serve notice of that hearing upon all parties by first class mail. If the court  
103 determines at the hearing that the writ was issued improperly, or that any property seized is  
104 exempt from or is not subject to execution, the court shall immediately issue an order to the  
105 officer releasing such property or portion thereof from the writ of execution. If the court finds  
106 that the property or a portion thereof is subject to execution and not exempt, it shall issue an  
107 order directing the officer to proceed with the sale of the non exempt property subject to  
108 execution. If the originally scheduled date of sale for which notice has been given has passed,  
109 notice of the new date and time of sale shall be provided as required herein. No sale may be held  
110 until the Court has decided upon the issues presented at the hearing. At the hearing, the court  
111 may award costs as it deems appropriate.

112 (3) If no request for hearing is filed. If a request for hearing is not filed as provided for in this  
113 Rule and the time for doing so has expired, then the officer shall proceed to sell or deliver the  
114 property subject to execution in accordance with the writ and this Rule 69.

115 (4) This paragraph (h) shall not be applicable to judicial mortgage foreclosure proceedings  
116 commenced under Utah Code Annotated, Title 78, Chapter 37.

117 (i) Proceedings on sale of property.

118 (1) Notice of sale. Before the sale of the property on execution notice thereof must be given  
119 as follows: (A) in case of perishable property or animals, by posting written notice of the time  
120 and place of sale, and generally describing the property to be sold, in the district courthouse and  
121 in at least three other public places of the county or city where the sale is to take place, for such a  
122 time as may be reasonable, considering the character and condition of the property; (B) in case of  
123 other personal property, by posting written notice of the time and place of sale, and generally  
124 describing the property to be sold, in the district courthouse and in at least three public places of

the county or city where the sale is to take place, for not less than seven nor more than 14 days, and by publishing a copy thereof at least one time not less than one day preceding the sale in some newspaper of general circulation published or circulated in the county where the sale is to take place, if there is one; (C) in case of real property, by posting written notice of the time and place of sale, and particularly describing the property, for 21 days, on the property to be sold, at the place of sale, at the district courthouse of the county where the real property to be sold is situated, and in at least three public places of the county or city where the sale is to take place, and by publishing a copy thereof at least 3 times, once a week for 3 successive weeks immediately preceding the sale, in some newspaper of general circulation published or circulated in the county, if there is one. In addition, except for the sale of perishable property or animals, if notice of the date and time of sale has not been served upon the judgment debtor previously, notice of the date and time of sale shall be served upon the judgment debtor personally or by causing the same to be transmitted by regular or certified mail to the judgment debtor's last known address.

(2) Postponement. If at the time and place appointed for the sale of any real or personal property on execution the officer shall deem it expedient and for the interest of all persons concerned to postpone the sale for want of purchasers, or other sufficient cause, the officer may postpone the same from time to time, until the same shall be completed; and in every such case the officer shall make public declaration thereof at the time and place previously appointed for the sale, and if such postponement is for a longer time than 72 hours, notice thereof shall be given in the same manner as the original notice of such sale is required to be given.

(3) Conduct of sale. All sales of property under execution must be made at auction to the highest bidder, Monday through Saturday, legal holidays excluded, between the hours of 9 o'clock a.m. and 8 o'clock p.m. After sufficient property has been sold to satisfy the execution no more shall be sold. Neither the officer holding the execution nor such officer's deputy shall become a purchaser, or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery it must be within view of those who attend the sale. The sale must be held in a place reasonably accessible to the general public. The property must be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, consisting of several known lots or parcels, they must be sold separately; or when a portion of such real property is claimed by a third person, and the third person requires it to be sold

~~separately, such portion must be thus sold. All sales of real property must be made at the courthouse of the county in which the property, or some part thereof, is situated. The judgment debtor, if present at the sale, may also direct the order in which the property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, and the officer must follow such directions. The officer shall pay to the judgment creditor or the attorney for the judgment creditor so much of the sales proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and reasonable accrued costs must be returned to the judgment debtor, unless otherwise directed by the judgment or the court.~~

~~(4) Accounting of sale. Upon request of the judgment debtor or the judgment debtor's attorney, the plaintiff shall deliver an accounting of any execution sale, including the amount due on the judgment, accrued costs, and the amount realized at the sale.~~

~~(5) Purchaser refusing to pay. Every bid shall be deemed an irrevocable offer; and if the purchaser refuses to pay the amount bid for the property struck off to such purchaser at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss is occasioned thereby, the party refusing to pay, in addition to being liable on such bid, is guilty of a contempt of court and may be punished accordingly. When a purchaser refuses to pay, the officer may also, in such officer's discretion, thereafter reject any other bid of such person.~~

~~(6) Personal property. When the purchaser of any personal property pays the purchase money, the officer making the sale shall deliver the property to the purchaser (if such property is capable of manual delivery) and shall execute and deliver to the purchaser a certificate of sale and payment. Such certificate shall state that all right, title and interest which the debtor had in and to such property on the day the execution or attachment was levied, and any right, title and interest since acquired, is transferred to the purchaser.~~

~~(7) Real property. Upon a sale of real property the officer shall give to the purchaser a certificate of sale, containing: (A) a particular description of the real property sold; (B) the price paid by the purchaser for each lot or parcel if sold separately; (C) the whole price paid; (D) a statement to the effect that all right, title, interest and claim of the judgment debtor in and to the property is conveyed to the purchaser; provided that where such sale is subject to redemption that fact shall be stated also. A duplicate of such certificate shall be filed for record by the officer~~

187 in the office of the recorder of the county. The real property sold shall be subject to redemption,  
188 except where the estate sold is less than a leasehold of a two-years' unexpired term, in which  
189 event said sale is absolute.

190 (j) ~~Redemption of real property from sale.~~

191 (1) ~~Who may redeem. Real property sold subject to redemption, or any part sold separately,~~  
192 ~~may be redeemed by the following persons or their successors in interest: (A) the judgment~~  
193 ~~debtor; (B) a creditor having a lien by judgment, mortgage, or other lien on the property sold, or~~  
194 ~~on some share or part thereof, subsequent to that on which the property was sold.~~

195 (2) ~~Redemption; how made. The person seeking redemption may make payment of the~~  
196 ~~amount required to the person from whom the property is being redeemed, or for such person to~~  
197 ~~the officer who made the sale, or such officer's successor in office. At the same time the~~  
198 ~~redemptioner must produce to the officer or person from whom the redemptioner seeks to~~  
199 ~~redeem, and serve with the notice to the officer; (A) a certified copy of the judgment under~~  
200 ~~which the redemptioner claims the right to redeem, or, if the redemptioner redeems upon a~~  
201 ~~mortgage or other lien, a copy certified by the recorder; (B) an assignment, properly~~  
202 ~~acknowledged or proved where the same is necessary to establish the claim; (C) an affidavit by~~  
203 ~~the redemptioner or an authorized agent showing the amount then actually due on the judgment,~~  
204 ~~mortgage or other lien.~~

205 (3) ~~Time for redemption; amount to be paid. The property may be redeemed within six~~  
206 ~~months after the sale by paying the amount of the purchase with a surcharge of 6 percent thereon~~  
207 ~~in addition, together with the amount of any assessment or taxes, and any reasonable sum for fire~~  
208 ~~insurance and necessary maintenance, upkeep, or repair of any improvements upon the~~  
209 ~~property, which the purchaser may have paid thereon after the purchase, with interest at the~~  
210 ~~lawful rate on such other amounts, and, if the purchaser is also a creditor having a lien prior to~~  
211 ~~that of the person seeking redemption, other than the judgment under which said purchase was~~  
212 ~~made, the amount of such other lien, with interest.~~

213 ~~In the event there is a disagreement as to whether any sum demanded for redemption is~~  
214 ~~reasonable or proper, the person seeking redemption may pay the amount necessary for~~  
215 ~~redemption, less the amount in dispute, to the court out of which execution or order authorizing~~  
216 ~~the sale was issued, and at the same time file with the court and serve upon the purchaser a~~  
217 ~~petition setting forth the item or items demanded to which the redemptioner objects, together~~

~~with the grounds of objection; and thereupon the court shall enter an order fixing a time for hearing of such objections. A copy of the order fixing time for hearing shall be served on the purchaser not less than five days before the day of hearing. Upon the hearing of the petition the court shall enter an order determining the amount required for redemption. In the event an additional amount to that theretofore paid to the clerk is required, the person seeking redemption shall pay to the clerk such additional amount within 7 days. The purchaser shall forthwith execute and deliver a proper certificate of redemption upon being paid the amount required by the court for redemption.~~

~~(4) Subsequent redemptions. If the property is redeemed by a creditor, any other creditor having a right of redemption may, within 60 days after the last redemption and within six months after the sale, redeem the property from such last redemptioner in the same manner as provided in the preceding paragraph, upon paying the sum of such last redemption, with a surcharge of three percent thereon in addition, and the amount of any assessment or tax, and any reasonable sum for fire insurance and necessary maintenance, upkeep or repair of any improvements upon the property which the last redemptioner may have paid thereon, with interest on such amount, and, in addition, the amount of any lien held by such last redemptioner prior to the redemptioner's own, with interest.~~

~~(5) Notice of redemption. Written notice of any redemption shall be given to the officer and a duplicate filed with the recorder of the county. Similar notice shall be given of any taxes or assessments or any sums for fire insurance, and necessary maintenance, upkeep or repair of any improvements upon the property, paid by the person redeeming, or the amount of any lien acquired, other than upon which the redemption was made. Failure to file such notice shall relieve any subsequent redemptioner of the obligation to pay such taxes, assessments, or other liens.~~

~~(6) Certificate of redemption or conveyance. If no redemption is made within six months after the sale, the purchaser or the purchaser's assignee is entitled to a conveyance; or if so redeemed, whenever 60 days have elapsed and no other redemption by a creditor has been made and notice thereof has been given, the last redemptioner, or assignee, is entitled to a sheriff's deed at the expiration of six months after the sale. If the judgment debtor redeems, the judgment debtor must make the same payments as are required to effect a redemption by a creditor. If the debtor redeems, the effect of the sale is terminated and the debtor is restored to the debtor's~~



estate. Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to the debtor a certificate of redemption, duly acknowledged. Such certificate must be filed and recorded in the office of the county recorder where the property is situated.

(7) ~~Rents during period of redemption. The purchaser from the time of sale until a redemption, and a redemptioner from the time of redemption until another redemption, is entitled to receive from any tenant in possession the rents of the property sold or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser, or their assigns, from the property thus sold preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid; and if the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing of such purchaser or creditor, or their assigns, a written and verified statement of the amounts of such rents and profits thus received, the period for redemption is extended five days after such sworn statement is given by such purchaser or such purchaser's assigns to such redemptioner or debtor. If such purchaser or such purchaser's assigns shall for a period of one month from and after such demand, fail or refuse to give such statement, such redemptioner or debtor may, within 60 days after such demand, bring an action to compel an accounting and disclosure of such rents and profits, and until 15 days from and after the final determination of such action the right of redemption is extended to such redemptioner or debtor.~~

(k) ~~Remedies of purchaser.~~

(1) ~~For waste. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, upon motion, with or without notice, of the purchaser, or such purchaser's successor in interest. But it is not waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs or buildings thereon or to use wood or timber on the property therefor, or for the repair of fences, or for fuel for a family while such person occupies the property. After the estate has become absolute, the purchaser or a successor in interest may maintain an action to recover damages for injury to the property by the tenant or other person in possession after sale and before possession is delivered under the conveyance.~~

279       ~~(2) Where purchaser fails to obtain possession of property or is dispossessed thereof or~~  
280 ~~evicted therefrom. Where, because of irregularities in the proceedings concerning the sale, or~~  
281 ~~because the property sold was not subject to execution and sale, or because of the reversal or~~  
282 ~~discharge of the judgment, a purchaser of property sold on execution, or a successor in interest,~~  
283 ~~fails to obtain the property or is dispossessed thereof or evicted therefrom, the court having~~  
284 ~~jurisdiction thereof shall, on motion of such party and after such notice to the judgment creditor~~  
285 ~~as the court may prescribe, enter judgment against such judgment creditor for the price paid by~~  
286 ~~the purchaser, together with interest. In the alternative, if such purchaser or a successor in~~  
287 ~~interest, fails to recover possession of any property or is dispossessed thereof or evicted~~  
288 ~~therefrom in consequence of irregularity in the proceedings concerning the sale, or because the~~  
289 ~~property sold was not subject to execution and sale, the court having jurisdiction thereof shall, on~~  
290 ~~motion of such party and after such notice to the judgment debtor as the court may prescribe,~~  
291 ~~revive the original judgment in the name of the petitioner for the amount paid by such purchaser~~  
292 ~~at the sale, with interest thereon from the time of payment at the same rate that the original~~  
293 ~~judgment bore; and the judgment so revived shall have the same force and effect as would an~~  
294 ~~original judgment of the date of the revival.~~

295       ~~(l) Contribution and reimbursement; how enforced. When upon an execution against several~~  
296 ~~persons more than a pro rata part of the judgment is satisfied out of the proceeds of the sale of~~  
297 ~~the property of one, or one of them pays, without a sale, more than such person's proportion, and~~  
298 ~~the right of contribution exists, such person may compel such contribution from the others; and~~  
299 ~~where a judgment against several is upon an obligation of one or more as security for the others,~~  
300 ~~and the surety has paid the amount or any part thereof, by sale of property or otherwise, the~~  
301 ~~surety may require reimbursement from the principal. The person entitled to contribution or~~  
302 ~~reimbursement shall, within one month after payment, or sale of the property in the event there is~~  
303 ~~a sale, file in the court where the judgment was rendered a notice of such payment and the claim~~  
304 ~~for contribution or reimbursement. Upon the filing of such notice the clerk must make an entry~~  
305 ~~thereof in the margin of the docket which shall have the effect of a judgment against the other~~  
306 ~~judgment debtors to the extent of their liability for contribution or reimbursement.~~

307       ~~(m) Payment of judgment by person indebted to judgment debtor. After the issuance of an~~  
308 ~~execution and before its return, any person indebted to the judgment debtor may pay to the~~

officer the amount of the debt, or so much thereof as may be necessary to satisfy the execution, and the officer's receipt is a sufficient discharge for the amount paid.

(n) Where property is claimed by third person. If an officer shall proceed to levy any execution on any goods or chattels claimed by any person other than the defendant, or should the officer be requested by the judgment creditor so to do, such officer may require the judgment creditor to give an undertaking, with good and sufficient sureties, to pay all costs and damages that the officer may sustain by reason of the detention or sale of such property; and until such undertaking is given, the officer may refuse to proceed against such property.

(o) Order for appearance of judgment debtor; arrest. At any time when execution may issue on a judgment, the court from which an execution might issue shall, upon written motion of the judgment creditor, with or without notice as the court may determine, issue an order requiring the judgment debtor, or if a corporation, any officer thereof, to appear before the court, a master, or other person appointed by the court, at a specified time and place to answer concerning the judgment debtor's property. A judgment debtor, or if a corporation, any officer thereof, may be required to attend outside the county in which such person resides, but the court may make such order as to mileage and expenses as is just. The order may also restrain the judgment debtor from disposing of any nonexempt property pending the hearing. Upon the hearing such proceedings may be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as on execution against such property.

(p) Examination of debtor of judgment debtor. At any time when execution may issue on a judgment, upon proof by affidavit or otherwise to the satisfaction of the court that any person or corporation has property of such judgment debtor or is indebted to the judgment debtor in an amount exceeding two hundred fifty dollars, not exempt from execution, the court may order such person or corporation or any officer or agent thereof, to appear before the court or a master at a specified time and place to answer concerning the same. Witness fees and mileage, if any, may be awarded by the court.

(q) Order prohibiting transfer of property. If it appears that a person or corporation, alleged to have property of the judgment debtor or to be indebted to the judgment debtor in an amount exceeding fifty dollars, not exempt from execution, claims an interest in the property adverse to such judgment debtor or denies such indebtedness, the court may order such person or corporation to refrain from transferring or otherwise disposing of such interest or debt until such

time as may reasonably be necessary for the judgment creditor to bring an action to determine such interest or claim and prosecute the same to judgment. Such order may be modified or vacated by the court at any time upon such terms as may be just.

(r) ~~Witnesses.~~ Witnesses may be required to appear and testify in any proceedings brought under this rule in the same manner as upon the trial of an issue.

(s) ~~Order for property to be applied on judgment.~~ The court or master may order any property of the judgment debtor, not exempt from execution, in the possession of the judgment debtor or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment.

(t) ~~Appointment of receiver.~~ The court may appoint a receiver of the property of the judgment debtor, not exempt from execution, and may forbid any transfer or other disposition thereof or interference therewith until its further order therein; provided that before any receiver shall be vested with the real property of the judgment debtor a certified copy of the appointment shall be recorded in the office of the recorder of the county in which any real estate sought to be affected thereby is situated.